

COWAN, DEBAETS, ABRAHAMS & SHEPPARD LLP
ATTORNEYS AT LAW

June 14, 2006

Carrie Feiner Enterprises
73 Fox Meadow Road
Scarsdale, NY 10583

Re: Lyons Partnership, L.P. v. Carrie Feiner Enterprises and Carrie Feiner

Dear Ms. Carrie Feiner:

This law firm represents Lyons Partnership, L.P. (collectively, "Plaintiffs"). Plaintiffs are the owners or exclusive licensees of all copyrights and trademark rights in the popular children's character Barney[®]. Plaintiffs exploit these character in numerous products and services worldwide, including television broadcasts and children's toys.

Plaintiffs have determined that you have been distributing knock-off costumes or using them to provide entertainment services to children and adults. This activity is a direct violation of Plaintiffs' exclusive rights, the Lanham Act (the Federal Trademark Act), the Copyright Act, and common law.

Plaintiffs will not tolerate costume infringement. Plaintiffs do not manufacture or license adult costumes of the genuine Barney[®] characters for such use. In view of your infringing conduct, Plaintiffs have instructed this law firm to file suit against you and your business. Copies of the Complaint naming you and your business as defendants in the lawsuit are attached hereto as Exhibit "A". If the Complaint is filed against you, Plaintiffs will seek substantial money damages from you. For example, pursuant to the Lanham Act, Plaintiffs may be entitled to triple damages for your willful infringement of its trademark rights, as well as full attorneys' fees and costs. Likewise, to the extent a court finds that your infringement of Plaintiffs' copyrights in the character is willful, Plaintiffs may be awarded damages of up to \$150,000 per work infringed.

This letter and the attached documents provide the information you need to understand the lawsuit which may be filed against you and your business, as well as the documents required to settle this dispute before the lawsuit is filed. If you promptly take the steps outlined in the attached settlement package, your settlement amount will be \$100,000.

41 MADISON AVENUE – 34TH FLOOR, NEW YORK, NEW YORK 10010
TEL: (212) 497-0997 FAX: (212) 974-8474

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June 14, 2006
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We strongly urge you to immediately consult an attorney experienced in trademark and copyright law to help you review this settlement package. You may also wish to discuss this letter with your insurance carrier. The Complaint naming you and your business as defendants will be filed if you or your attorney fails to contact us within **10 days** of the date of this letter.

If you want to settle this matter without having to go to court you must agree to:

1. **STOP** the manufacture, sale, distribution, rental, performance, advertising and/or marketing of any costume of any of Plaintiffs' characters;
2. **SURRENDER** all infringing costumes in your possession or control. Arrangements for shipment are in the attached instruction sheet (Exhibit B).
3. **PAY \$100,000** by cashier's check or other good funds. Checks should be made payable to "Cowan, DeBaets, Abrahams & Sheppard LLP in Trust for Costume Litigation" and mailed to this office;
4. **ANSWER** certain questions about your infringing activities, as well as turn over all relevant supporting documentation; and
5. **SIGN** the attached Settlement Agreements which bar you from future infringement of Plaintiffs' rights.

Instructions for settlement and for completing the documents you need to fill out are contained in the yellow packet included with this letter. Again, we strongly recommend that you consult with an attorney and carefully review these materials.

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Upon satisfactory completion of these terms, Plaintiffs will execute and mail to you within ten (10) working days its portion of the Settlement Agreement, including full releases from liability. **If all terms are not met (or we have not heard from you) within ten (10) days from the date of this letter, this office will be forced to take legal action against you.** Once the Complaint have been filed, Plaintiffs will seek damages substantially greater than the settlement amount sought today.

If you have any questions after reviewing the yellow settlement packet, you may contact our costume litigation group at 212-497-0997.

Under federal law, any person given notice of a potential lawsuit is forbidden to destroy, move, or hide evidence in their possession or control. If such spoliation of evidence is established in court, a finding of contempt or a damage award will result.

The portions of this letter describing settlement are subject to the confidentiality provisions of Federal Rule of Evidence 408. Additionally, nothing herein shall limit or be construed to limit any claim, right or remedy that our clients may have, all of which are expressly reserved.

Sincerely,
COWAN, DEBAETS, ABRAHAMS &
SHEPPARD LLP



Matthew A. Kaplan

Attorneys for Plaintiffs Lyons Partnership, L.P.

RJS/mw
Encls.

STEP 4

RELEASE AND SETTLEMENT AGREEMENT

This RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into effective as of the date last set forth below, by and between Lyons Partnership, L.P. (collectively, "Plaintiffs"), and Carrie Feiner d/b/a Carrie Feiner Enterprises ("Company").

WHEREAS, Plaintiffs are the owners and exclusive licensees of various copyright and trademark registrations and other intellectual property rights pertaining to the Barney® children's character (hereinafter "the Protected Character"); and

WHEREAS, Company has a place of business at 73 Fox Meadow Road, Scarsdale, NY 10583;

WHEREAS, Company has purchased costumes which allegedly infringe Plaintiffs' rights in the Protected Character (the "Allegedly Infringing Costumes") and has resold, rented, or otherwise provided services making use of the Allegedly Infringing Costumes;

WHEREAS, Plaintiffs have made known to Company Plaintiffs' intent to file an infringement suit against Company in a United States District Court, relating to Company's purchases and sales, rentals or other uses of the Allegedly Infringing Costumes;

WHEREAS, Company has made certain representations to Plaintiffs, including an accounting of all Allegedly Infringing Costumes purchased by Company from any source; and further represents that Company's activities involving the Allegedly Infringing Costumes would not, if proven, constitute either (i) a breach of any prior settlement agreement made with any of the Releasing Parties or (ii) a violation of any court order in force related to any of the Protected Characters; and further represents that Company has not manufactured Allegedly Infringing Costumes;

WHEREAS, Company represents that it has surrendered to Plaintiffs all Allegedly Infringing Costumes and costumes that Plaintiffs have informed Company allegedly infringe the rights of Plaintiffs in the Protected Characters; and

WHEREAS, Plaintiffs and Company desire to settle the controversies between them without the expense or inconvenience of litigation.

NOW, THEREFORE, in consideration of these premises, and the conditions, covenants and promises set forth herein, Plaintiffs and Company hereby agree as follows:

1. **Inducement to Settle.** Company represents that the information it has provided to Plaintiffs in the Questionnaire provided to it by Plaintiffs (incorporated herein by reference) is, and all representations made by it to Plaintiffs are, accurate and complete to the best of Company's knowledge following reasonable inquiry. Company acknowledges and agrees that such information and representations are a material part of the inducement to Plaintiffs to enter into this Agreement and that any false or misleading representations or information shall constitute a material breach of this Agreement.

2. **Payment.** Company shall pay to Plaintiffs the sum of \$100,000 (the "Settlement Amount") by cashier's check or other certified funds made payable to "Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation", to be delivered to the following address not later than Monday, June 26, 2006:

**Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Avenue, 34th Floor
New York, New York 10010**

3. **No Other Sums.** No other or additional sums of any kind or amount, including but not limited to, damages, attorneys fees, costs, expert witness fees, expert consultant fees, investigation costs or fees are owed to Plaintiffs by Company or to Company by Plaintiffs.

4. **Cooperation.** Company shall cooperate in good faith with Plaintiffs in connection with any investigation of or litigation regarding possible infringing activities of other individuals and entities, including, but not limited to, consulting with Plaintiffs' counsel or investigators and appearing for deposition or trial testimony on reasonable notice without subpoena.

5. **Notice of Contact.** Company shall notify Plaintiffs of the fact and content of any conversation, contact, or other communication Company may receive or initiate concerning the possible sale, purchase, production, distribution, rental, importation, or advertising of or performance with any product or service which might infringe Plaintiffs' trademark or copyright rights. This notice, and the notice required by Paragraph 6 of this Settlement Agreement, must be made to:

**Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Avenue, 34th Floor
New York, New York 10010**

6. **Agreement Not to Infringe.** Company agrees to refrain from the purchase, manufacture, distribution, sale, rental, performance and/or other direct or indirect use of any costumes or other items which bear the likeness of the Protected Character or a confusingly similar likeness, and shall notify Plaintiffs if requested by any person or entity to engage in any such activity at any time in the future.

7. **Plaintiffs' Release.** For and in consideration of the terms and conditions hereof, including, without limitation, Company's ongoing cooperation with Plaintiffs as set forth above and full payment to Plaintiffs as provided above, Plaintiffs, on behalf of Plaintiffs, Plaintiffs' partners, representatives, attorneys, employees, successors, affiliates, employers, heirs and assigns (the "Releasing Parties"), and each of them, hereby releases and forever discharges and Company, and its past and present officers, directors, employees, employers, attorneys, partners, heirs, beneficiaries, subsidiaries, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever arising out of their personal or business relations through the date of the Company's execution hereof relating to the Company's purchase, resale, rental and/or use of the Allegedly

Infringing Costumes and the advertising or offering thereof, and subject to the exclusions specified herein; provided, however, that the Release shall be void in the event of any breach of Company's representations and warranties set forth herein or Company's failure to have responded truthfully and completely to the Questionnaire.

This release does not extend to any individual or entity referring business to Company nor to any individual or entity receiving referrals from Company nor to any customer, supplier or independent contractor of Company, nor to any officers, directors or shareholders thereof. This release does not extend to any person, including Company, against whom any of the Releasing Parties has commenced litigation or if such person's alleged activities involving the Allegedly Infringing Costumes would, if proven, constitute either: (i) a breach of any prior settlement agreement made with any of the Releasing Parties, or (ii) a violation of any court order in force related to any of the Protected Character. This release does not extend to any manufacturer (including Company) of Allegedly Infringing Costumes or of other products that infringe Plaintiffs' rights in the Protected Character.

8. **Company's Release.** Company, on behalf of itself, its partners, representatives, agents, attorneys, employees, successors, affiliates, employers, heirs and assigns, and each of them, hereby releases and forever discharges Plaintiffs and Plaintiffs' past and present officers, directors, franchisees, employees, employers, attorneys, partners, agents, heirs, beneficiaries, subsidiary, successor or predecessor corporations or partnerships, their affiliates, their assigns, and each of them, of and from any and all claims, demands, allegations, obligations, costs, damages, fees or causes of action of any nature whatsoever, including but not limited to any claims relating to the purchases and sales, rentals or other uses of Allegedly Infringing Costumes from any source.

9. **Unknown Claims.** Plaintiffs and Company expressly declare that they knowingly waive any and all rights they may have under the provisions of Section 1542 of the California Civil Code and any comparable federal or state statute or rule of law by releasing all claims, known or unknown, except as otherwise expressly provided herein. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. **Effectiveness of Release.** The release to be provided by Plaintiffs to Company pursuant to Paragraph 7 of this Agreement shall become effective only if no petition under the United States Bankruptcy Code is filed by any or all of the persons and/or entities comprising Company, no petition under the United States Bankruptcy Code is filed against any or all of persons and/or entities comprising Company, and no assignment for the benefit of creditors is made by any or all of the persons and/or entities comprising Company on or within ninety-one (91) days after the timely receipt by Plaintiffs of the payment of the Settlement Amount. If any such petition under the United States Bankruptcy Code is so filed, then the releases set forth in Paragraphs 7 and 8 shall not become effective.

11. **Attorneys' Fees and Costs.** In the event it is necessary for Plaintiffs to take action to enforce the terms of this Agreement, Company agrees that, in addition to any actual damages incurred, Plaintiffs shall recover from Company the costs and expenses, including attorney's fees, incurred in connection with such action.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with reference to the subject matter contained herein, and all prior negotiations and understandings between the parties are merged into this Agreement.

13. **Modification or Amendments.** This Agreement may not be altered, modified, amended or changed in any respect or particular whatsoever, except by a writing duly executed by the parties hereto.

14. **Interpretation of Agreement.** The validity, interpretation and performance of this Agreement shall be controlled by, and construed under the laws of the State of New York, excluding any body of law governing conflicts of law.

15. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable for any reason whatsoever, the remaining provisions hereof shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

16. **No Waiver.** The waiver by any party of the performance of any covenant, condition, promise or representation shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, promise or representation.

17. **Confidentiality.** The parties agree to hold the terms of this Agreement confidential and to indicate only that the dispute was settled on satisfactory terms.

18. **Additional Performance.** The parties agree to execute and deliver such other and further documents and to perform such other acts as shall be reasonably necessary to effectuate the purposes of this Agreement.

IN WITNESS WHEREOF, Plaintiffs and Company have executed this Agreement effective this ____ day of _____, 2006.

CARRIE FEINER ENTERPRISES,

Lyons Partnership, L.P.

By _____
Printed Name

By _____

Its _____

Its _____

Signature _____

Signature

Carrie Feiner

INSTRUCTIONS FOR SETTLEMENT

If you want to settle this matter without having to go to court, follow the instructions below.

If we have not received your settlement materials (Costumes, Payment, completed Questionnaire and signed Settlement Agreements), or otherwise heard from you or your attorney by 10 days from the date of the demand letter, the Complaints naming you and your business as defendants in the lawsuit will be filed.

We urge you to submit this settlement package to an experienced lawyer for review. After the Complaints have been filed, Plaintiffs will seek damages far greater than the amount we require today.

STEP 1. SURRENDER all infringing costumes in your possession or control to Cowan, DeBaets, Abrahams & Sheppard LLP. Use the enclosed Shipping Form.

- Fill out one copy of the attached Shipping Form for each box of costumes you are sending to us and enclose it inside the box.
- Ship the box(es) to:
Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Ave., 34th Floor
New York, NY 10010
- Do not place any documents from Steps 2-4 in the box(es).

STEP 2. PAY the settlement amount by cashier's check or money order, as described.

- Your payment should be made out to "Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation."

STEP 3. ANSWER certain questions about the costumes you purchased.

- Fill out all of the information on the attached Questionnaire.

STEP 4. SIGN two copies of the Settlement Agreement, under which you promise not to infringe the rights of Plaintiffs in the future.

- Read the attached Settlement Agreement carefully and sign both copies of it.
- Send both signed copies of the Settlement Agreement to Cowan, DeBaets, Abrahams & Sheppard LLP in an envelope, together with receipts/invoices for your costumes and your settlement payment and Questionnaire. (One copy of the Settlement Agreement will be returned to you when signed on behalf of Plaintiffs).

If you have questions, you may call Cowan, DeBaets, Abrahams & Sheppard LLP
at (212) 497-0997.

PROCEED TO NEXT PAGE

STEP 1 - SHIPPING FORM

Complete and enclose one copy of this form in every box shipped to Cowan, DeBaets, Abrahams & Sheppard LLP.

TO:

Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Ave., 34th Floor
New York, NY 10010

FROM:

Carrie Feiner Enterprises
73 Fox Meadow Road
Scarsdale, NY 10583

I am shipping a total of ____ boxes. This box contains:

Look-alike costume	Heads (number in this box)	Bodies (number in this box)	Feet (number in this box)	Hands (number in this box)	Other (describe below) (number in this box)
Barney					
Baby Bop					
BJ					
Bob The Builder					
Clifford the Big Red Dog					
Thomas the Tank Engine					
Thomas Conductor					

If you used the "other" above, use this space to say what other parts you are shipping in this box:

You must include the original invoices, receipts, catalogs, order forms, and shipping labels, and other documents related to your purchase of this costume. DO NOT ENCLOSE your Questionnaire, Settlement Payment or Settlement Agreement with the look-alike costumes.

PROCEED TO STEP 2

STEP 2 - SETTLEMENT PAYMENT

To settle this dispute without having to go to court, you must pay the settlement amount indicated in the demand letter, \$100,000.

Make your cashier's check or money order payable to:

"Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation"

Use the enclosed pre-addressed envelope to send your Settlement Payment (Step 2) with your completed Questionnaire (Step 3) and both copies of the signed Settlement Agreement (Step 4) to:

Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Avenue, 34th Floor
New York, New York 10010

PROCEED TO STEP 3

STEP 3 - QUESTIONNAIRE PART A

Complete both parts of this Questionnaire. **The Release and Settlement Agreement is effective only if you provide accurate and complete information in all parts of the Questionnaire.**

How many "Barney" look-alike costumes have you purchased? _____

How many "Baby Bop" look-alike costumes have you purchased? _____

How many "BJ" look-alike costumes have you purchased? _____

How many "Bob the Builder" look-alike costumes have you purchased? _____

How many "Clifford the Big Red Dog" look-alike costumes have you purchased? _____

How many "Thomas the Tank Engine" look-alike costumes have you purchased? _____

How many "Thomas Conductor" look-alike costumes have you purchased? _____

Make one copy of Questionnaire Page B for each look-alike costume you have purchased, and provide all information requested. Make one copy of Questionnaire Page C for each outside business or individual described on that form, and provide all information requested. Return this Part A and each copy of Part B and Part C, together with your check for the settlement amount (payable to "Cowan, DeBaets, Abrahams & Sheppard LLP, In Trust For Costume Litigation"), and two signed copies of the Settlement Agreement to:

Cowan, DeBaets, Abrahams & Sheppard LLP
Attn: Costume Litigation
41 Madison Avenue, 34th Floor
New York, New York 10010

This Questionnaire was completed by _____
Full name (print or type)

Position (print or type)

For and on behalf of
Carrie Feiner d/b/a Carrie Feiner Enterprises
73 Fox Meadow Road
Scarsdale, NY 10583

If you have any questions, you may call Cowan, DeBaets, Abrahams & Sheppard LLP
at (212) 497-0997.

STEP 3 CONTINUES ON THE NEXT PAGE

STEP 3 - QUESTIONNAIRE PART B

Copy and complete one copy of this page for each costume purchased.

The look-alike
costume described
here is:

CHECK ONE

- ☐ Barney ☐ Clifford the Big Red Dog ☐ Bob the Builder
☐ Baby Bop ☐ Thomas the Tank Engine ☐ Thomas Conductor
☐ BJ

1. Purchased from: _____
Address: _____
Telephone: _____ Fax: _____ Web: _____
Email: _____ Date of purchase: _____ Price: _____

2. How frequently was the costume rented? _____
(For example, "seventeen times a week".)
What was the rental price? _____
(For example, "\$175.00 per hour, \$850.00 per day".)

3. How frequently did you provide entertainment services to children using the costume? _____
What was the price for those services? _____
(For example, "\$650.00 per appearance and \$250.00 minimum per hour".)

4. Did you sell the costume? _____
Sold to: _____
Address: _____
Telephone: _____ Fax: _____ Web: _____
Email: _____ Date of sale: _____ Price: _____

You **must** send us the original invoices, receipts, catalogs, order forms, and shipping labels, and other documents related to your purchase and sale of this costume. If you have not provided information about resale of this costume, you **must** also ship the costume to Cowan, DeBaets, Abrahams & Sheppard LLP as indicated at Step 1 of the "Instructions for Settlement" or explain here why you cannot do so: _____

STEP 3 CONTINUES ON THE NEXT PAGE

STEP 3 - QUESTIONNAIRE PART C

REFERRALS / OUTSIDE INDIVIDUALS AND ENTITIES

Submit one copy of this page for each business/individual fitting the descriptions below.

As part of the settlement, you must disclose the identity of all businesses and individuals with whom you were involved in any way in the sale, purchase, rental, performance, arranging for performances, and the advertising of services using any costume of Barney, Baby Bop, BJ, Bob the Builder, Clifford the Big Red Dog, Thomas the Tank Engine, and the Thomas conductor **no matter what name was used to refer to these characters.** This includes:

1. Businesses/individuals to whom or from whom you rented such costumes
2. Businesses/individuals with whom you shared profits from any use of such costumes
3. Businesses/individuals to whom you referred business or from whom you received business referrals related to such costumes
4. Businesses/individuals who gave performances for you or with you using such costumes
5. Businesses/individuals who offered to sell you such costumes.

Name of business and/or individual: _____

If a business, provide the name of the owner/contact: _____

Full Address: _____

Telephone: _____ Fax: _____ Web: _____

Email: _____ Date(s) of transactions: _____

1. How frequent was your involvement with that business/individual? _____

2. Describe your relationship (referral, rental, performer, etc.) and the products/services involved: _____

What was that business/individual paid, or what did that business/individual pay, for such products/services? _____

(For example, "\$250.00 for a 3 day rental" or "\$75.00 per hour for performance.")

What were you paid, or what did you pay, for such products/services? _____

What did each customer pay for such products/services, and what portion of that amount did you keep? _____

3. If a referral, what was the referral fee? _____

The look-alike costumes involved were: ☐ Barney ☐ Clifford the Big Red Dog ☐ Bob the Builder
☐ Baby Bop ☐ Thomas the Tank Engine ☐ Thomas Conductor
 (Check all that apply) ☐ BJ

PROCEED TO STEP 4 AFTER COMPLETING ALL COPIES OF THIS PAGE